

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  RICHARD AND GENEVA HELM AND TIM AND VICKI MCCART,  Complainants,  v.  U S WEST COMMUNICATIONS, INC.,  Respondent.	DOCKET NO. FCU-99-6 (C-98-272) (C-99-386)
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**ORDER INITIATING FORMAL COMPLAINT PROCEEDINGS  
AND SETTING BRIEFING SCHEDULE**

(Issued December 21, 1999)

**PROCEDURAL HISTORY**

**A.    C-98-272, Helm v. U S West**

On November 30, 1998, Richard and Geneva Helm filed a complaint with the Board regarding their local telephone service, provided by U S WEST Communications, Inc. (U S West). The complaint was identified as C-98-272. The Helms' original complaint concerned a delay in installation of service at their new house in Van Meter, Iowa. When they placed their order, the Helms had requested that service be available in July of 1998. On December 22, 1998, the Helms updated their complaint by informing the Board that U S West was requesting \$5,434.93 from

the Helms and their neighbors, the McCartys, to cover the cost of laying 3,441 feet of cable to provide telephone service to their new houses.

U S West responded on January 15, 1999, explaining that pursuant to its Iowa Tariff No. 1, Section 4.5.A, when the company extends its facilities to furnish telephone service where no service is available, the company will provide an allowance of one-half route-mile of standard construction without charge. The referenced tariff language reads (in relevant part) as follows:

Where the Company extends its facilities on public highways or on private property in order to furnish telephone service in a territory where no facilities are available, the Company will provide each customer an allowance of one-half mile of standard construction without charge.

U S West Iowa Tariff No. 1, Section 4.5.A. Charges for construction in excess of the one-half mile allowance are based on the cost to the company to install the new facilities. U S West determined that it would have to place 6,081 feet of buried service wire in order to provide service to the Helms and the McCartys. After deducting the one-half mile allowance, U S West calculated there was 3,441 feet of cable to be placed, the cost of which was then divided between the two customers.

On January 21, 1999, U S West supplemented its response to indicate that two lines were installed at the Helms' residence on January 20, 1999, some six months after the requested installation date. The installation was in the form of temporary cable laid on the surface of the ground.

Board staff continued to ask questions of U S West concerning the calculation of the facilities extension charge. In particular, on February 26, 1999, staff asked U S West to explain why it was allowing only a single one-half mile allowance when two new customers were involved and the tariff says that "each" customer is entitled to a half-mile allowance. U S West responded on March 12, 1999, stating that the half-mile allowance in the tariff does not mean that each additional customer gets an additional half mile. Instead, according to U S West, all customers together are entitled to the first half mile at no charge.

On March 19, 1999, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) wrote a letter requesting issuance of a proposed resolution finding that each customer is entitled to a half-mile construction allowance, rather than a single allowance for multiple customers. U S West responded on April 6, 1999, arguing that the "tariff has never been interpreted to say that if the company places a mile of facilities for 2 customers that neither customer would pay excess construction."

On April 13, 1999, the Helms updated their complaint to inform the Board that they were still being served with temporary cable on the surface of their property, which was interfering with their efforts to landscape their new property. U S West had not yet contacted the Helms (or the McCartys, who were being served from the same cable) regarding a permanent installation.

On April 14, 1999, staff sent another letter to U S West stating that "Staff agrees with the Office of Consumer Advocate that it does not appear that EACH customer received one half mile credit..." and requesting additional information from U S West regarding the possibility of further cost sharing, in light of new construction in the area.

U S West responded on June 17, 1999, by re-stating its position and indicating that the Helms and the McCarts should be required to pay \$2,717 each for facilities construction in excess of one-half mile. U S West also indicated that it "appreciate[d] the additional information regarding the sale of neighboring property. U S WEST will investigate the facility requirements for the area. We are presently working with our contractor to permanently place the temporary facilities used to provide their service. Our contractor will be in contact with the customers." The permanent facilities were subsequently installed, although the date of installation is not clear in the record.

On June 17, 1999, Board staff issued a proposed resolution, stating as follows: "It appears the company has agreed to allow you and the McCarts each the half-mile credit of construction charges. We believe this has saved each couple \$2,348.00." From the statement, it appears Board staff misunderstood U S West's response of June 17, 1999, and thought that U S West was giving the Helms and the McCarts a full mile of construction allowance, when U S West had not changed its position on this issue.

On June 23, 1999, the Helms wrote to say that U S West had "installed" the permanent facilities, but had not connected them, so they were still being served using the temporary, surface lines. This was making it difficult to mow the grass and they were experiencing a high degree of static on the line during rain storms. The Helms also indicated they had not been contacted by U S West regarding their financial obligations for the new facilities.

On July 22, 1999, U S West filed its response stating that the Helms' service was cut over to the permanent facilities during the week of July 12, 1999 (one year after the Helms' requested service date). U S West also indicated that the Helms were being charged \$2,717.47 for the extension of facilities; two payments of \$226.47 had been made, leaving a balance of \$2,264.54 to be paid in ten installments. Staff communicated this information to the Helms on July 26, 1999.

**B. C-99-386, McCart v. U S West**

Tim and Vicki McCart filed an informal complaint with the Board on October 7, 1999, which was identified as C-99-386. The McCarts questioned the amount U S West was charging them for the facilities extension; they believed that Board staff had ruled in favor of the customers in the Helms case, but they were being assessed a facilities extension charge of \$2,717, which meant they were sharing the half-mile allowance with the Helms. They believed the assessment was contrary to the proposed resolution.

U S West responded on November 3, 1999, once again asserting its position that the tariff gives the customers a single half-mile of construction credit, regardless of the number of customers involved. U S West demonstrated that \$2,717 is the correct charge to each of the customers, based upon its interpretation of the tariff.

On November 17, 1999, Board staff issued a proposed resolution indicating that, based upon the resolution of the Helm complaint, Board staff could not intercede further in this matter.

**C. Consumer Advocate Letter**

On December 1, 1999, Consumer Advocate filed a letter in both complaint files, expressing concern that the final resolution of the Helms complaint did not, in fact, represent the decision made by Board staff. Consumer Advocate quotes from the Board staff letter of April 14, 1999, stating that "Staff agrees with the Office of Consumer Advocate that it does not appear that EACH customer received one half mile credit, in the case of the Helms and McCart's." Consumer Advocate concludes from this that Board staff intended to resolve the complaint in a manner favorable to the Helms and McCart's, but the final calculations of the amount due are based upon a resolution favorable to U S West. Consumer Advocate asks Board staff to reconsider the November 17, 1999, resolution in the McCart's' complaint file.

### **BOARD ANALYSIS**

The Board will treat Consumer Advocate's letter as a request for formal complaint proceedings and will combine the two informal complaint dockets for final resolution. As shown by the procedural history described above, these complaints have already been through a protracted informal complaint process; it appears there are no material factual disputes associated with either case; and the only remaining issue is the proper interpretation of the relevant provision of U S West's tariff. Under these circumstances, the Board will initiate formal complaint proceedings to resolve the remaining issue.

Because there are no disputed issues of material fact, the Board will not schedule a hearing in this matter. Instead, the parties will be directed to file briefs and argument concerning the proper interpretation of the U S West tariff as applied to the facts of these cases. The Helms and McCartis are encouraged to work with the Consumer Advocate in preparation of a single brief, if that approach is acceptable to them.

If any party believes there are disputed issues of material fact that the Board must resolve, then they should file a request for hearing, clearly identifying the fact or facts at issue, the positions of the parties regarding those facts, and describing the potential impact of the issue on the outcome of these complaints. Any such request for hearing should be filed no later than January 5, 2000.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. Pursuant to IOWA CODE § 476.2 (1999), the informal complaint files identified as C-98-272 and C-99-386 are docketed for formal investigation as Docket No. FCU-99-6.
2. Pursuant to IOWA ADMIN. CODE 199-6.7 (1999), the Board files in C-98-272 and C-99-386 are made a part of the record in Docket No. FCU-99-6.
3. On or before January 11, 2000, any party wishing to supplement the arguments already made by that party in this docket may file a brief.
4. If any party believes a hearing is required in this docket, that party may file a request for hearing. Any such request shall be filed on or before January 5, 2000.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 21<sup>st</sup> day of December, 1999.